

# **Attachment No. CCC 4**

Big Corona State Beach Operating Agreement

C-3193



State of California • The Resources Agency

DEPARTMENT OF PARKS AND RECREATION

Gray Davis, Governor

Rusty Areias, Director

Southern Service Center  
8885 Rio San Diego Drive, Suite 270  
San Diego, CA 92108  
(619) 220-5300  
(619) 220-5400 FAX

July 24, 2000

City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92658-8915  
Attn: Dave Kiff

Dear Dave,

Enclosed is the final Operating Agreement for Corona del Mar State Beach. This agreement is for thirty (30) years, from August 19, 1999 through August 18, 2029.

It has been a pleasure working with you on this project. If I can be of further assistance, please call me at (619) 220-5308.

Sincerely,

A handwritten signature in cursive script that reads "Marsha Moss".

Marsha Moss, Concession Specialist  
Southern Service Center

Attachments

bcc: Michael Tope  
Don Ito

OPERATING AGREEMENT

CORONA DEL MAR STATE BEACH

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OPERATING AGREEMENT  
CORONA DEL MAR STATE BEACH

THIS OPERATING AGREEMENT (Agreement), made and entered into this 1st day of August, 1999, by and between STATE OF CALIFORNIA, acting through the Department of Parks and Recreation, hereinafter referred to as "STATE", and CITY OF NEWPORT BEACH, a Municipal Corporation, hereinafter called the "CITY", without regard to number and gender.

W I T N E S S E T H:

A. Pursuant to the provisions of Section 5080.30, et seq., of the Public Resources Code of the State of California, STATE may enter into an operating agreement with subdivisions of the State of California for the development and operation of lands under the jurisdiction of STATE for the purpose of the State Park System.

B. STATE has acquired for park and recreational purposes certain real properties known as "Corona del Mar State Beach" as identified in Exhibit "A" and "B". These park properties are located within the City of Newport Beach in the County of Orange.

C. STATE and CITY desire to enter into an Agreement to provide for the development, operation, control and maintenance of Corona del Mar State Beach by the City of Newport Beach as shown in attached Exhibit "A" and as described in Exhibit "B", which exhibits are attached hereto and by reference made a part hereof, hereinafter referred to as premises.

D. The Legislature in the Budget Act of 1999/2000 has authorized the STATE and CITY to enter into said agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. PREMISES: STATE authorizes CITY to develop, operate, control and maintain Corona del Mar State Beach as shown in Exhibit "A" and described in Exhibit "B" attached, and hereby made a part hereof. STATE shall not be liable for any costs of development, maintenance, control, or operation of the premises.

2. USE: CITY agrees to develop, operate, control and maintain the premises as public recreational beach and park with related concession and other facilities all accessible and subject to the use and enjoyment of the general public. Such development and operation of the premises shall be conducted in accordance with all applicable federal, state, and local government statutes, laws, or regulations.

CITY may, upon written permission of STATE, improve the premises by constructing and operating marine educational or research facilities including, but not limited to, ocean life and tidepool exhibits. These facilities shall not adversely affect the public's use and enjoyment of the premises.

CITY may adopt rules and regulations for the public's use and enjoyment of the premises. Any such rules and regulations adopted by the CITY shall conform to and be consistent with the rules and regulations adopted by STATE and generally applicable to the State Park System, including the Premises. The premises shall not be used for any other purpose than those permitted by this Agreement.

3. TERM: The term of this Agreement shall be for thirty (30) years and shall commence on August 19, 1999 and end on August 18, 2029.

4. CONSIDERATION: In consideration of the services to be performed by CITY pursuant to this Agreement, i.e., development, care, maintenance,

operation, and control of premises, STATE hereby authorizes the use of the premises by the CITY on a rent-free basis on the condition that CITY exert a good faith effort in performing the services identified in this paragraph. In the event that CITY fails to perform in good faith, such services for the benefit, use, and enjoyment for the general public, the beach unit shown in Exhibit "A" and described in Exhibit "B" shall revert back to the STATE.

5. CONSTRUCTION: CITY, at no cost or expense to STATE, may with prior approval of STATE undertake new construction, reconstruction, alteration and maintenance to enhance public recreation facilities. All plans and specifications for improvement or development shall be approved by STATE. No such improvement or development, including beach erosion control and protection, shall be commenced by CITY's own forces or by its contractors without prior written STATE approval of such plans and specifications. STATE agrees not to unreasonably withhold said approval.

6. OWNERSHIP OF IMPROVEMENTS: Upon termination of this Agreement, pursuant to any provisions under paragraph 19 (TERMINATION), all improvements constructed shall become part of the realty and title to said improvements shall vest in STATE. For all improvements erected on the premises by CITY, a Notice of Completion shall be filed with the STATE.

7. MAINTENANCE OBLIGATIONS OF CITY: During the term of this Agreement, CITY, at no cost or expense to STATE, shall provide for upkeep and maintenance of the premises in a safe, good condition, and in substantial repair, and all improvements of any kind which may be erected, installed, or placed thereon. During the term of this agreement it shall be the CITY's responsibility to insure that the premises are maintained in such a level and standard of condition and repair as other city park and beach facilities.

All construction, operation and maintenance shall be in accordance with all laws, building and other codes, regulations, ordinances, and generally accepted industry standards pertaining to such work.

8. CONCESSIONS: Subject to prior approval in writing by STATE, CITY may grant concessions in or upon the premises consistent with the requirements of the STATE under Section 5080.33 and 5080.34 of the Public Resources Code. All concession contracts shall be subject to the requirements of the Public Resources Code Section 5080.20. No concession shall be granted by CITY which will exploit public lands for commercial purposes.

9. REVENUES: Any income to CITY derived from its control and operation of premises for services, benefits, or accommodation to the general public shall strictly be used for operation and maintenance expenses of the premises. Any such portion of income as may exceed costs and expenses shall be made available to the STATE in accordance with Section 5080.32 (b)(2) of the Public Resource Code.

10. RECORDS AND ACCOUNTS: CITY shall, at all times during the term of this Agreement, keep separate, true and complete books, records, and accounts of all income and fees received and all expenditures made by CITY in relation to concessions, special services, and all other matters incident to the development, control, and operation of the premises. CITY shall report said income and expenditures to STATE on an annual basis, which annual report shall be submitted for the period commencing July 1<sup>st</sup> and ending June 30<sup>th</sup> of each reporting year, and shall be filed with STATE not later than the following September 30<sup>th</sup>. The report shall include a reasonable weekly estimate of the number of visitors to the area, as well as the number of vehicles. In addition, CITY shall provide STATE with a monthly attendance report.

The books, records, and accounts kept by CITY applying to the operation of the premises, shall at all reasonable times be open for audit or inspection by STATE.

The annual report required by this clause shall be delivered to STATE at the address set forth in Paragraph 18 (NOTICES).

11. BEACH EROSION CONTROL AND PROTECTION WORK:

Any development, beach erosion control, or protection work which may be undertaken by STATE or the United States of America, along or on the premises, in the manner provided by law or under the rules of STATE, shall not, in any way be construed as constituting a termination of this Agreement or in any way affecting same.

STATE shall have the right to enter into agreements for such work during the term hereof and to go upon the premises or to authorize any person, firm, or corporation to go upon the premises for the purposes of such construction, beach erosion control, or protection work, or the doing of other public work for the improvement or development of the premises, provided that STATE, except for emergency repair, shall give CITY three (3) months prior written notice of its intention to do any of the work herein mentioned. CITY shall be given the opportunity to review and comment on plans and specifications before such work is undertaken. STATE agrees to repair, at its sole cost and expense, any damage to CITY'S improvements caused by such hereinabove described work.

12. EMINENT DOMAIN PROCEEDINGS: If the premises or any portion thereof is taken by proceedings in eminent domain, STATE shall receive the entire award for such taking except that CITY shall receive out of said award the fair market value of any improvements then existing and constructed by CITY, except for: (a) improvements erected with funds realized through income from the premises, and (b) improvements the costs of which CITY has been paid or reimbursed by



STATE through grants or other sources. Fair market value shall be determined by said proceedings taking into consideration the terms of this Agreement.

13. UTILITIES: CITY shall be responsible for all utility charges supplied to the premises.

14. PUBLIC LIABILITY INSURANCE: CITY, agrees, at its sole expense, to maintain in force during the term of this Agreement comprehensive general liability insurance, insuring against claims for injuries to persons or property occurring in, upon, or about premises. The insurance shall have limits of not less \$1,000,000 for injuries to person or persons; not less than \$200,000 for property damage; and said limits shall be adjusted annually to reflect changes in the prior year's Consumer Price Index (CPI) for Los Angeles – Anaheim – Riverside (all urban consumers – all items), promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor. STATE agrees that CITY, at CITY'S option, may self-insure the coverages required by this Paragraph 14 (PUBLIC LIABILITY INSURANCE).

15. HOLD HARMLESS AGREEMENT: CITY shall indemnify, hold harmless, and defend STATE, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses, or liability costs arising out of the development, operation, or maintenance of the property by CITY described herein which claims, demands, or causes of action arise under Government Code Section 895.2 or otherwise, except for liability arising out of the concurrent or sole negligence, or deliberate act of STATE, its officers, agents, or employees.

In the event STATE is named as co-defendant in a legal action, under the provisions of the Government Code Section 810 et seq., and CITY is served with process of such legal action, then CITY shall immediately notify STATE of such fact and shall represent STATE in such legal action as provided herein unless STATE undertakes to represent itself as co-defendant in such legal action, in which event STATE shall bear its own litigation costs, expenses, and attorney's fees.

10/04



~~In the event CITY is named as co-defendant in a legal action, under the provisions of the Government Code Section 810 et seq., and STATE is served with process of such legal action, then STATE shall immediately notify CITY of such fact and shall represent CITY in such legal action unless CITY undertakes to represent itself as co-defendant in such legal action, in which event CITY shall bear its own litigation costs, expenses, and attorney's fees.~~

In the event judgment is entered against STATE and CITY because of the concurrent negligence of STATE and CITY, their officers, agents, or employees, an apportionment of the liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.

16. PROHIBITIONS AGAINST CITY ASSIGNING, SUBLETTING:

This Agreement shall not, nor shall any interest therein or thereunder be assigned, delegated, mortgaged, hypothecated, or transferred either by CITY let or sublet, or grant any licenses or permits with respect to the use and occupancy of the premises or any portion thereof, without obtaining the prior written consent of STATE which shall not be unreasonably withheld. This paragraph does not apply to the provisions of Paragraph 7 (MAINTENANCE OBLIGATIONS OF CITY) and Paragraph 8 (CONCESSIONS) above.

17. DEFAULTS AND REMEDIES: Either party may terminate this Agreement for breach by the other party upon giving the other party written notice at least sixty (60) days prior to said termination date.

In the event of any breach of this Agreement by STATE, CITY shall notify STATE in writing of such breach, and STATE shall have thirty (30) days in which to initiate action to cure said breach.

In the event of any breach of this Agreement by CITY, STATE shall notify CITY in writing of said breach, and CITY shall have thirty (30) days in which to initiate action to cure such breach.

18. NOTICES: All written notices pursuant to this Agreement shall be addressed as set forth below or as either party may hereafter designate by written notice and shall be personally delivered or sent through the United States mail:

STATE: Department of Parks and Recreation  
Orange Coast District  
3030 Avenida del Presidente  
San Clemente, California 92672

With copy to: Department of Parks and Recreation  
Park Services Division  
Concessions Office  
P.O. Box 942896  
Sacramento, California 94296-0001

CITY: City Manager  
City of Newport Beach  
P.O. Box 1768  
Newport Beach, California 92658-8915

19. TERMINATION: Notwithstanding the provisions of Paragraph 17 (DEFAULTS AND REMEDIES) either party may terminate this Agreement for any reason. The party who wishes to terminate the Agreement shall give written notice of its intention no later than three hundred and sixty five (365) days before the scheduled termination date. Such notice shall be given in writing and shall be effective on the date given in the notice as the scheduled date for the termination of the Agreement. In the event that the STATE is the party choosing to terminate the

Agreement, the STATE shall pay to CITY on the termination date a sum of money equal to the depreciated cost of the improvements installed or constructed upon the premises by the CITY with the following exceptions, (a) improvements erected with funds realized through income from the premises, and (b) improvements the cost of which CITY has been paid or reimbursed by STATE, through grants or other sources.

Depreciated costs shall be computed in the following manner:

A. Upon completion of improvements, or within sixty (60) days of opening for public use, whichever is later, CITY will submit verified cost statements accompanied by substantiating invoices and bills of labor, material, or any other reasonable construction costs, to STATE. These costs, plus such future construction costs when expended shall represent the cost of improvements.

B. The cost of improvements shall be depreciated on a straight-line basis over a thirty (30) year life. The depreciated cost shall be determined by dividing the cost of improvements by three hundred and sixty (360) months and multiplying the results by the number of whole months remaining in the term of the Agreement at the scheduled termination date.

C. STATE may not commence termination proceedings until such time as the funds required for such termination and reimbursement have been obtained through appropriations by the Legislature and through the normal budgeting process of the STATE.

It is expressly understood that the above-described reimbursement provisions are not applicable where STATE terminates this Agreement for any breach on the part of CITY.

In the event of breach, bankruptcy, insolvency, abandonment, or termination of Agreement upon CITY'S request, the above-described reimbursement provision shall not apply and shall not be considered an obligation of the STATE.

20. REAL PROPERTY ACQUISITION: It is understood and agreed by the parties hereto, that all applications for real property rights, appurtenant to the real properties herein described, shall be made in the name of and on behalf of STATE, and shall be subject to the prior approval in writing of STATE.

21. NONDISCRIMINATION: Pursuant to Public Resources Code Section 5080.34, this Agreement prohibits, and every contract on lands that are subject to this Agreement shall expressly prohibit, discrimination against any person because of race, color, religion, sex, marital status, national origin, or ancestry of that person. Attached Standard Form 17A (Exhibit C) is incorporated herein.

22. LIMITATION: This Agreement is subject to all valid and existing contracts, leases, licenses, encumbrances, and claims of title which may affect premises.

23. PARAGRAPH TITLES: The paragraph titles in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect this Agreement.

24. AGREEMENT IN COUNTERPARTS: This Agreement is executed in counterparts, each of which shall be deemed an original.

25. AGREEMENT IN WRITING: This Agreement contains and embraces the entire Agreement between the parties hereto and neither it nor any part of it may be changed, altered, modified, limited, or extended orally, or by any

Agreement between the parties unless such Agreement be expressed in writing, signed, and acknowledged by the STATE and CITY, or their successors in interest.

26. INSPECTION: STATE or its authorized representative shall have the right at all reasonable times to inspect the premises to determine if the provisions of this Agreement are being complied with.

27. SUCCESSORS IN INTEREST: Unless otherwise provided in this Agreement, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of who shall be jointly and severally liable hereunder.

28. PARTIAL INVALIDITY: If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

29. WAIVER OF RIGHTS: The failure of STATE or CITY to insist upon strict performance of any of the terms, conditions, and covenants in this Agreement shall not be deemed a waiver of any right or remedy that STATE or CITY may have, and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions, and covenants herein contained.

IN WITNESS WHEREOF, the parties have executed this Agreement the  
day and year first above written.

CITY OF NEWPORT BEACH  
MAYOR

By *Dennis D. O'Neil*  
DENNIS D. O'NEIL, Mayor

STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION

By *Rusty Arrias*  
RUSTY ARRAS, Director

CITY CLERK

By *Katherine M. Hanklin*

DEPARTMENT OF GENERAL SERVICES

By \_\_\_\_\_

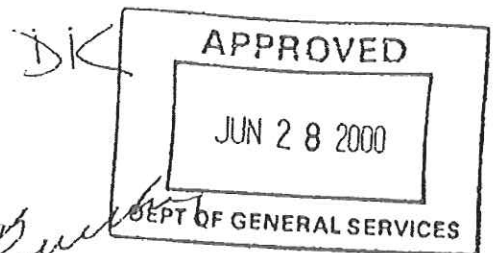


Approved as to legal sufficiency in  
accordance with requirements of  
Public Resources Code Sections 5080.02-5080.21.

BILL LOCKYER, Attorney General  
of the State of California

By: *Walter E. Wunderlich*  
WALTER E. WUNDERLICH, Deputy

DATE: *June 15, 2000*



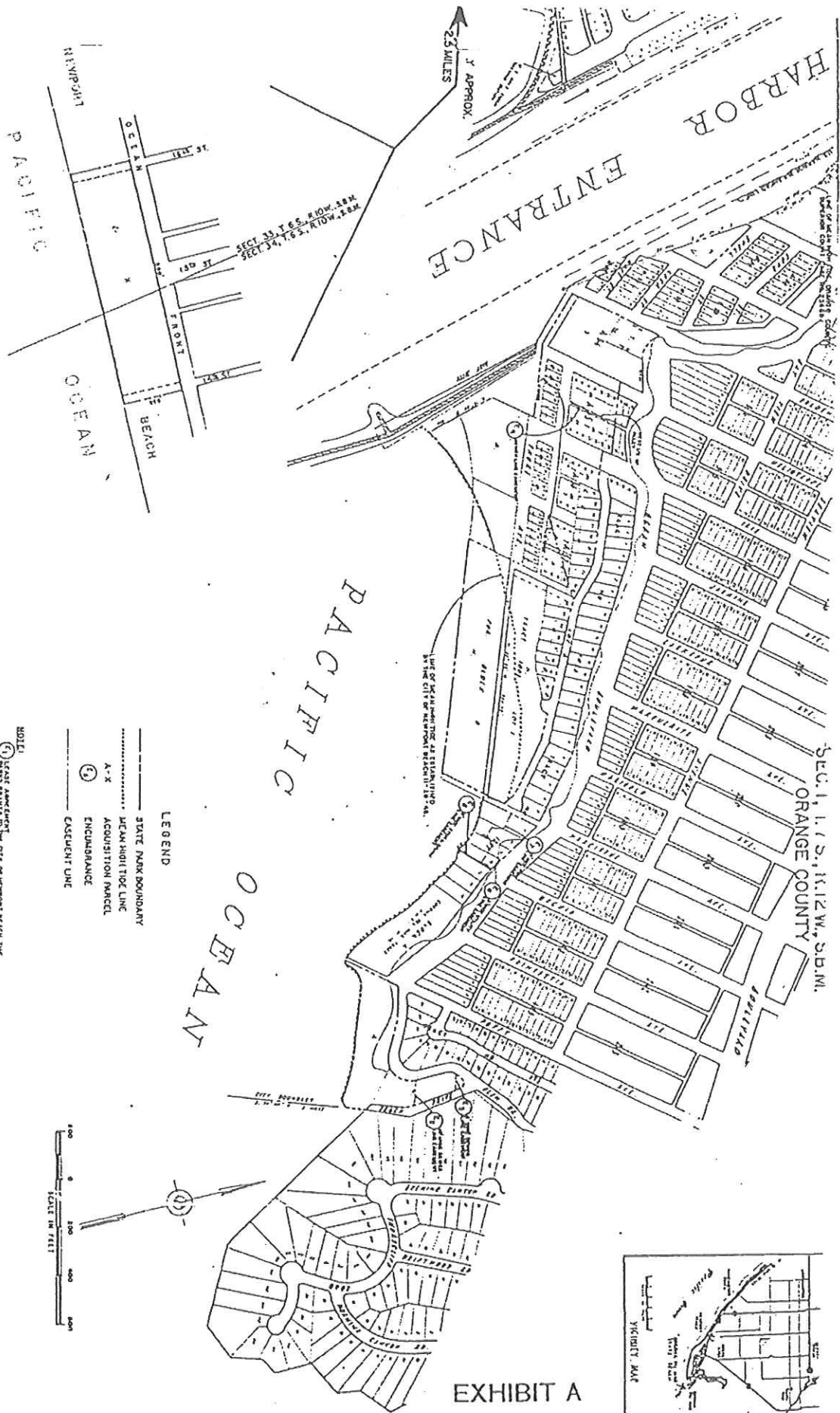


EXHIBIT A

6876

DRAWING: 2128  
SHEET: 1

CORONA DEL MAR STATE BEACH  
1 AND OWNERSHIP RECORD

RESOURCES AGENCY OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION

*P. J. Anderson*

DATE: \_\_\_\_\_  
DRAWN BY: \_\_\_\_\_  
CHECKED: \_\_\_\_\_



The following described lands are situated in the City of Newport Beach, County of Orange, State of California:

PARCEL 1:

That portion of Lot B as shown on a map of Corona Del Mar recorded in Book 3, at pages 41 and 42, of Miscellaneous Maps, records of said County, bounded and described as follows:

Beginning at the point of intersection of the Northeasterly line of said Lot B with the Southwesterly prolongation of the Northwesterly line of Iris Avenue, formerly 35<sup>th</sup> Avenue, as shown on said map, and running thence South 39°38' West along said prolongation 170 feet;  
thence South 15°00' East 306 feet, more or less, to the line of ordinary high tide of the Pacific Ocean;  
thence Northeasterly and Easterly along said line of ordinary high tide of the Pacific Ocean, to the Southwesterly prolongation of the Northwesterly line of Larkspur avenue, formerly 37<sup>th</sup> Avenue, as shown on said map;  
thence North 39°38' East along said prolongation 75.30 feet, more or less, to the Northeasterly line of said Lot B;  
thence North 68°22' West along said Northeasterly line 630.88 feet, more or less, to the point of beginning.

PARCEL 2:

Lot D as shown on a map of Tract No. 673, recorded in Book 20, at pages 17 and 18, of Miscellaneous Maps, records of said County.

PARCEL 3:

Portions of the lands shown on the Corona Del Mar Tract Map recorded in Book 3 at pages 41 and 42 of Miscellaneous Maps, records of said County, more particularly described as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of Block A-35;

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18 and 20 of Block A-36;

All of Block A-34;

Lots 1, 2, 3, 4, 8, 9, 10 and 11 of Block D-33;

Lots 3 and 4 of Block E-33;

Lots 1 to 16 inclusive of Block A-37.

PARCEL 4:

Lot 22 of Block A-36 of Corona Del Mar, as shown on map recorded in Book 3, at pages 41 and 42 of Miscellaneous Maps, records of said Orange County, excepting a portion of said Lot 22 lying Northwesterly of a line described as follows:

Beginning at the point of intersection of the Northeasterly line of said Lot 22 with a line which is parallel with and distant 30 feet Southeasterly from the Northwesterly line of said Block A-36 of Corona Del Mar, and running thence Southwesterly in a direct line 49.97 feet to the Southwesterly corner of said lot.

PARCEL 5:

That portion of Lot 8 in Block A-36 lying Northwesterly of a line parallel to the Northwesterly line of Iris Avenue, formerly known as 35<sup>th</sup> Avenue and distant 80 feet Southeasterly therefrom, of Corona Del Mar, as shown on a map recorded in Book 3, pages 41 and 42 of Miscellaneous Maps, records of said Orange County.

PARCEL 6:

That portion of Block B of Corona Del Mar, as shown on a map recorded in Book 3, pages 41 and 42 of Miscellaneous Maps, records of said Orange County, described as follows:

Beginning at the point of intersection of the Southwesterly line of Shore Avenue, formerly Ocean Avenue, as shown on said Map of Corona Del Mar, with the Southwesterly prolongation of the Northwesterly line of Larkspur Avenue, formerly known as 37<sup>th</sup> Avenue, as said Shore Avenue, and 37<sup>th</sup> Avenue are laid out and shown upon said Map of Corona Del Mar;  
thence Southwesterly along the said Southwesterly prolongation of the Northwesterly line of said Larkspur Avenue, a distance of 200 feet;  
thence Southeasterly along a line parallel with the Southwesterly line of said Shore Avenue, to an intersection with the Southwesterly prolongation of the Southeasterly line of Narcissus Avenue, formerly known as 40<sup>th</sup> Avenue, as said 40<sup>th</sup> Avenue is laid out and shown upon said Map of Corona Del Mar;  
thence Northeasterly along said Southwesterly prolongation of the Southeasterly line of said Narcissus Avenue 200 feet to an intersection with the Southwesterly line of said Shore Avenue;  
thence Northwesterly along the Southwesterly line of said Shore Avenue.

PARCEL 7:

That portion of Block C of Corona Del Mar, as shown on a map recorded in Book 3, pages 41 and 42 of Miscellaneous Maps, records of said Orange County, described as follows:

Beginning at the point of intersection of the Northwesterly line of Dahlia Avenue, formerly 31<sup>st</sup> Avenue, produced Southwesterly with the Southwesterly line of Shell Street, formerly A Street, as shown on said Map;  
Thence Southwesterly along the Southwesterly extension of the Northwesterly line of said Dahlia Avenue to its intersection with the line of ordinary high tide of the Pacific Ocean in Newport Bay as established by Decree rendered April 3, 1942 in the action entitled County of Orange, plaintiff, vs. Shirley H. Willits and others, defendants, Case No. 40024 in the Superior Court of the State of California, in and for the County of Orange, a certified copy of which Decree was recorded April 3, 1942 in Book 1141, page 353 of Official Records;  
thence Southerly along said line of ordinary high tide to the point of intersection with the Southwesterly extension of the Northwesterly line of Fernleaf Avenue, formerly 32<sup>nd</sup> Avenue;  
thence Northeasterly along the Southwesterly extension of the Northwesterly line of said Fernleaf Avenue to its intersection with the Southwesterly line of said Shell Street, as shown on said Map;  
thence Northwesterly along said Southwesterly line of said Shell Street to the point of beginning.

PARCEL 8:

That portion of Lot 1, of Tract No. 1006, as shown on a Map recorded in Book 33, page 29 of Miscellaneous Maps, records of said Orange County, not included within the lines of Tract No. 1026, as shown on a Map recorded in Book 33, pages 37 and 38 of Miscellaneous Maps, records of said Orange County, and not included within the lines of Tract No. 1257, as shown on a Map recorded in Book 38, page 25 of Miscellaneous Maps, records of said Orange County.

PARCEL 9:

Block C of Tract No. 673, per Map recorded in Book 20, pages 17 and 18 of Miscellaneous Maps, records of said Orange County;

PARCEL 10:

Lots 9, 10, 11 and 12, Tract 1257, as per map recorded in Book 38, page 25 of Miscellaneous Maps, records of said Orange County.

PARCEL 11:

Lots 18 to 34 inclusive of Tract No. 1026 as shown on the map thereof recorded in Book 33, pages 37 and 38 of Miscellaneous Maps, records of said Orange County and as shown on Licensed Surveyors Map filed in Book 12, page 35 of Records of Survey in the office of the County Recorder of said County, being a re-survey of said Tract No. 1026, showing corrections of bearings and distances.

PARCEL 12:

Beginning at the point of intersection of the Southerly prolongation of the Easterly line of Fourteenth Street with the South line of Ocean Avenue (65 feet in width), as said Street and Avenue are shown on the Map of Section "B" of Newport Beach, recorded in Book 4, page 27 of Miscellaneous Maps, records of said County;  
thence Southerly along the Southerly prolongation of the Easterly line of said Fourteenth Street a distance of 250 feet;  
thence Westerly along a line parallel with and 250 distant Southerly from, the South line of said Ocean Avenue a distance of 980 feet, more or less, to the point of intersection with the Southerly prolongation of the Westerly line of Sixteenth Street in said City;  
thence Northerly along the Southerly prolongation of the Westerly line of said Sixteenth Street to the point of intersections with the South line of said Ocean Avenue;  
thence Easterly along said line a distance of 980 feet, more or less, to the point of beginning.

## NONDISCRIMINATION CLAUSE (P-1)

STD. 17A (REV. 2-83)

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
2. This contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

15. HOLD HARMLESS AGREEMENT: City hereby waives all claims and recourse against the State, including the right to contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incident to this agreement, except claims arising from, and to the extent of, the concurrent or sole negligence of the State, its officers, agents, or employees, or other wrongful acts for which the State is solely responsible.

City shall protect, indemnify, hold harmless, and defend State, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses, or liability costs arising out of the development, construction, operation, or maintenance of the property described herein and compliance with all laws, including but not limited to the Americans With Disabilities Act of 1991 as provided for in Section 30, except for liability arising out of, and to the extent of, the negligence of State, its officers, agents, or employees or other wrongful acts for which the State is found liable by a court of competent jurisdiction.

In the event State is named as a defendant in any claim or legal action arising out of the development, construction, operation, or maintenance of the property described herein, upon tender of the claim or action by State to City, City shall assume State's defense and represent State in such legal action at City's expense, subject to the provisions herein.

In lieu of tender to City of the claim or action against State, State may elect to represent itself in legal action, in which event, State shall bear its own litigation costs, expenses and attorney's fees. Notwithstanding the foregoing, in the event State is required to represent itself because of a conflict of interest by counsel representing City,

City, and the State with the consent of the Office of the Attorney General, will agree on the choice of defense counsel. The City will pay the litigation costs and expenses, which shall include court costs, if any, costs of mediators or arbitrators, experts and consultants, and any other costs reasonably incurred in response to any claim.


In the event State is found to be concurrently negligent with City by a court of competent jurisdiction for loss or damage to persons or property arising from, growing out of, or in any way connected with or incident to this agreement, State and City shall cooperate and use their best efforts in seeking and obtaining an apportionment of liability from the court, and neither party shall request a jury apportionment. This provision is intended as a complete and voluntary waiver of any right to a jury trial.

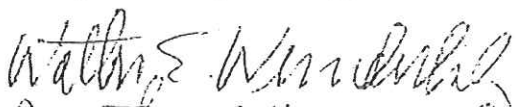
In the event State is found to be negligent or to have been responsible for any other wrongful act, for which liability to another is determined by a court of competent jurisdiction for loss or damage to persons or property arising from, growing out of, or in any way connected with or incident to this agreement, State shall bear its own litigation costs, expenses and attorney's fees.

If City has paid for any costs, which are the responsibility of State under this section, State shall reimburse City at City's request. State, in its sole discretion, may provide any reimbursement required in the form of a credit against any fees or other moneys due State under this agreement.

May 23, 2000  
DATE

June 15, 2000

  
JOHN E. NOYES  
Mayor of Newport Beach

  
Walter Winkler  
Deputy Attorney General

CMG  
DPR  
6/15/00

30. AMERICANS WITH DISABILITIES ACT:

Without limiting City's responsibility under this Agreement for compliance with all laws, with regard to all operations and activities that are the responsibility of City under this Agreement, City shall be solely responsible for complying with the requirements of the Americans With Disabilities Act of 1990 ["ADA"] (Public Law 101-336, commencing at Section 12101 of Title 42, United States Code (and including Titles I, II, and III of that law)), and the Rehabilitation Act of 1973, and all related regulations, guidelines, and amendments to both laws.

With regard to facilities for which City is responsible for operation, maintenance, construction, restoration, or renovation under this Agreement, City shall also be responsible for compliance with Government Code Section 4450, et seq.; Access to Public Buildings by Physically Handicapped Persons, and Government Code Section 7250, et seq.; Facilities for Handicapped Persons, and any other applicable laws.

June 15, 2000

Walter E. Winkler  
Deputy Attorney General

3-23-2000

OK to include in  
operating agreement  
for CDM State Beach



John E. Noyes  
Mayor of Newport Beach

Chris  
DPR  
6/15/00



15. **HOLD HARMLESS AGREEMENT:** City hereby waives all claims and recourse against the State, including the right to contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incident to this agreement, except claims arising from, and to the extent of, the concurrent or sole negligence of the State, its officers, agents, or employees, or other wrongful acts for which the State is solely responsible.

City shall protect, indemnify, hold harmless, and defend State, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses, or liability costs arising out of the development, construction, operation, or maintenance of the property described herein and compliance with all laws, including but not limited to the Americans With Disabilities Act of 1991 as provided for in Section 30, except for liability arising out of, and to the extent of, the negligence of State, its officers, agents, or employees or other wrongful acts for which the State is found liable by a court of competent jurisdiction.

In the event State is named as a defendant in any claim or legal action arising out of the development, construction, operation, or maintenance of the property described herein, upon tender of the claim or action by State to City, City shall assume State's defense and represent State in such legal action at City's expense, subject to the provisions herein.

In lieu of tender to City of the claim or action against State, State may elect to represent itself in legal action, in which event, State shall bear its own litigation costs, expenses and attorney's fees. Notwithstanding the foregoing, in the event State is required to represent itself because of a conflict of interest by counsel representing City,

City, and the State with the consent of the Office of the Attorney General, will agree on the choice of defense counsel. The City will pay the litigation costs and expenses, which shall include court costs, if any, costs of mediators or arbitrators, experts and consultants, and any other costs reasonably incurred in response to any claim.


In the event State is found to be concurrently negligent with City by a court of competent jurisdiction for loss or damage to persons or property arising from, growing out of, or in any way connected with or incident to this agreement, State and City shall cooperate and use their best efforts in seeking and obtaining an apportionment of liability from the court, and neither party shall request a jury apportionment. This provision is intended as a complete and voluntary waiver of any right to a jury trial.

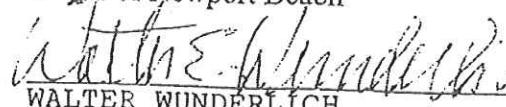
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If City has paid for any costs, which are the responsibility of State under this section, State shall reimburse City at City's request. State, in its sole discretion, may provide any reimbursement required in the form of a credit against any fees or other moneys due State under this agreement.

May 23, 2000  
DATE

DATED: June 15, 2000.

  
JOHN E. NOYES  
Mayor of Newport Beach

  
WALTER WUNDERLICH  
DEPUTY ATTORNEY GENERAL  
ATTORNEY GENERAL'S OFFICE

Craig  
DPR  
6/5/00

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June 15, 2000

Walter W. Mendelick  
Deputy Attorney General

3-23-2000  
OK to include in  
operating agreement  
for CDM State Beach

  
John E. Noyes  
Mayor of Newport Beach

CMG  
DPR  
6/5/00